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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,854	02/11/2004	John Allen Wooton	9526	3890

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

HECKERT, JASON MARK

ART UNIT	PAPER NUMBER
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1792

MAIL DATE	DELIVERY MODE
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03/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/776,854	Applicant(s) WOOTON ET AL.	
	Examiner JASON HECKERT	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/16/09 has been entered.

Response to Arguments

2. Due to the applicant's amendments to the claims, the previous rejections are rendered moot. Applicant has amended the claims to include limitations drawn to the carrying case, specifically to the fact that the case has an opening which is covered with an air permeable material so as to facilitate drying. Such a feature is common in the art of carrying wet devices. Baker shows a device for carrying wet paintbrushes that include air vents 23 in order to aid drying of the contents within. Additionally, it is well known in the art that enclosed moisture can create microbial growth and foul odors. Thus, including a vent in a carrying case for wet devices is not considered to be a patentably distinguishable feature.

3. In regards to the shape and dimensions of the carrying case, it is well held that shape and form are modifiable by one of ordinary skill. In regards to the location of the vent, it is well held that rearrangement of parts is obvious to one of ordinary skill.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bristol (US Patent 6,880,191) in view of Baker (US Patent 5,797,489). Bristol discloses a caddy, equivalent to a kit, comprising a durable container 11 made of plastic (col. 16 lines 35-37) that has an open top for ventilation (figure 4), a sprayer 100, cleaning compositions (col. 17 lines 25-27), and a variety of adaptors that provide quick-disconnect capabilities that could be used with a garden hose (col. 9 lines 10 – 17). Bristol further discloses a purifying device 44 that includes a particulate filter (col. 9 lines 29-30). Bristol also discloses that the caddy can contain brushes (col. 11 lines 50 – 53). The kit also comprises a first opening, in the form of hollow handle assembly 12, for receiving the spraying device, a composition, and adaptor. The assembly connects to the spraying device, delivers composition in the form of water and a dilute chemical injected through venturi injector 58, and has an adaptor for a hose 15. The open top of the container can be used for ventilation and draining. Bristol already discloses a filter 44, or purifier, comprising adaptor 46, screen 48, and body 50 in fluid line with the sprayer. The spray gun in combination with the fluid inlet, venturi injector 58, filter, and associated conduits constitute a spraying device. Chemical is drawn from a container 126. This structurally reads on the apparatus. This caddy is capable of treating the

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surface of a vehicle. This is regarded as the intended use of the apparatus. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988).

6. While Bristor obviates an open top for ventilation, Bristor does not disclose an opening in the front side that allows for air to ventilate the container. Containers for carrying wet devices are well known in the art to contain vents. Baker shows a device for carrying wet paintbrushes that include air vents 23 in order to aid drying of the contents within. Additionally, it is well known in the art that enclosed moisture can create microbial growth and foul odors. Thus, it would have been obvious at the time of the invention to modify Bristor and include an opening in the container for ventilating the container. Vents are conventionally covered with mesh or grating, and the inclusion of such a feature is not considered to be patentable.

7. In regards to claim 6, the apparatus of Bristor is a modified bucket-like device. A variety of buckets are known in the art that have the capacity to drain fluid, including wash buckets with drains, slotted bottoms, or mesh bottoms. One of ordinary skill in the art would find it obvious to modify buckets with vented bottoms, in the same fashion that Bristor modifies a presumably closed bottom bucket (Bristor is silent to the construction

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of the bottom) to allow the effluent of fluid and prevent accumulation which could alter operation of the device. Furthermore, the function of Bristor's bucket is not to retain fluid, but to hold a variety of devices that come into contact with fluid. One skilled in the art would find it obvious that draining such devices would be desirable. This is not considered to be a patentably distinct feature over the prior art.

8. In regards to the shape of the container, changes in shape or form have been held to be obvious. *In re Dailey* 149 USPQ 47, 50 (CCPA 1966). Carrying cases for wet devices are well known to be bucket-like (Bristor) or suitcase like (Baker).

Additionally, the location of the vent is not given patentable weight, absent a showing of unexpected results. Rearrangement of parts was held to have been obvious. *In re Japikse* 86 USPQ 70 (CCPA 1955).

9. Claim 1 rejected under 35 U.S.C. 103(a) as obvious over Barger et al. (US Patent 6,562,142) in view of Baker. Barger discloses a kit for cleaning vehicles comprising a spray device 20 and a brush-like applicator 16, wherein the spray device includes a barrel portion 46 for receiving a cleaning composition 12, a compartment 48 for a filter 50, and a connection 32 to a hose 24 (col. 3 lines 33-46). Barger discloses that the kit can include additional components; however he does not disclose a plastic carrying case. The inclusion of such a case is considered to be an obvious modification, if not inherent, to one of ordinary skill in the art. Items in a kit are generally packaged together in some sort of case thus constituting the "kit". Containers for carrying wet devices are well known in the art to contain vents. Baker shows a device for carrying wet paintbrushes that include air vents 23 in order to aid drying of the

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contents within. Additionally, it is well known in the art that enclosed moisture can create microbial growth and foul odors. Thus, it would have been obvious at the time of the invention to modify Barger and include an opening in the container for ventilating the container. Vents are conventionally covered with mesh or grating, and the inclusion of such a feature is not considered to be patentable.

10. Claim 3 rejected under 35 U.S.C. 103(a) as obvious over Bristor in view of Baker in further view of Lee. Bristor does not disclose the inclusion of a wash mitt, yet does disclose that the caddy can include commonly used washing devices for specific cleaning operations including brushes (col. 11 lines 50 – 53). Brushes are very similar in function to a wash mitt in that they provide an abrasive cleaning surface. A variety of wash mitts are notoriously well known in the art and are considered to be commonly used washing devices. Lee discloses one type of mitt that is particularly well suited for cleaning automobiles due to its two surfaces of varying abrasiveness. It would have been obvious at the time of the invention, to modify Bristor and include a wash mitt, like that of Lee, in the caddy as it is a commonly used washing device for removing dirt from surfaces.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art
Unit 1792

JMH